

February 12, 2010

VIA ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

**Re: Objection to Request for Access to Second Protective Order
Information
Application of Verizon Communications Inc. and Frontier Communications
Corporation for Consent to Transfer Control of Domestic Section 214 Authority
WC Docket No. 09-95**

Dear Ms. Dortch:

Frontier Communications Corporation (“Frontier”) and Verizon Communications Inc. (“Verizon”) object to the Acknowledgments of Confidentiality filed in this proceeding by Communications Workers of America (“CWA”) consultant Randy Barber, and by CWA employees Debbie Goldman, and Kenneth Peres.¹ None of these individuals is entitled to access to Highly Confidential Documents or Information under the Second Protective Order.² CWA’s consultant Barber has provided analysis underlying union or pension plan business decisions and/or participated in the competitive decision-making of those entities. In addition, he was found by a state Public Utility Commission to have participated in violations of similar confidentiality protections in a proceeding relating to the same transaction considered here. Similarly, neither of the two CWA employees who seek access to Highly Confidential Information is eligible to receive it: they are inside, not outside, employees of the union. Because the union is not, a “non-commercial party” under the Second Protective Order due to its participation in collective bargaining on behalf of the unionized workforce, neither CWA employee is entitled to an exception to the Second Protective Order’s prohibition against sharing Highly Confidential Information with inside personnel. Even if CWA were to be considered a “non-commercial party,” Ms. Goldman and Mr. Peres should only be permitted access to such material if they can certify that they are not involved with, and do not provide support to, decision-making for collective bargaining, as otherwise their access could be used to unfairly inform CWA’s bargaining negotiations.

¹ Letter from Kenneth R. Peres, CWA to Alexis Johns, FCC (Feb. 4, 2010) (“Peres Letter”).

² Second Protective Order at 2-3 (¶ 5).

Protective orders are adopted by the Commission expressly to “protect[] competitively valuable information while permitting limited disclosure for a specific purpose.”³ They are consequently crafted by the Commission to ensure that any disclosure is limited to individuals who will not be able to use knowledge gained from confidential information to harm the interests of the party submitting such information. Indeed, in making any determination regarding the disclosure of confidential material, the Commission balances the interests of parties favoring disclosure and non-disclosure,⁴ and must “ensur[e] that the fulfillment of its regulatory responsibilities does not result in the unnecessary disclosure of information that might put its regulatees at a competitive disadvantage.”⁵ The Commission’s use of protective orders is designed to restrict access “to those materials which, if released to competitors, would allow those competitors to gain a significant advantage in the marketplace.”⁶

Here, the Commission found certain financial and commercial information to be so particularly sensitive that it issued a Second Protective Order further limiting access to “ensure that highly confidential and competitively sensitive documents and information ... are afforded adequate protection.”⁷ Specifically, the Second Protective Order limits disclosure of Highly Confidential Documents and Highly Confidential Information to Outside Counsel and Outside Consultants and defines Outside Consultants as follows:

Consultants or experts retained for the purpose of assisting Counsel or a party in this proceeding, *provided that the Outside Consultants are not involved in competitive decision-making, i.e., Outside Consultants’ activities, association, and relationship with a client do not involve advice about or participation in the business decisions of the client or any competitor of a Submitting Party nor the analysis underlying the business decisions.* Outside Consultants include any expert employed by a non-commercial party in these proceedings, *provided that such a person is not involved in the competitive decision-making activities of any competitor of a Submitting Party.*⁸

³ *Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, Report and Order, 13 FCC Rcd 24816, 24831 (¶ 21) (1998).

⁴ *FCC v. Schreiber*, 381 U.S. 279, 291-92 (1965).

⁵ *Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, Report and Order, 13 FCC Rcd 24816, 24822 (¶ 8).

⁶ *See, e.g., Applications of Atlantic Tele-Network, Inc. and Cellco Partnership d/b/a Verizon Wireless; For Consent to Assign or Transfer Control of Licenses and Authorizations*, DA No. 09-2600, ¶ 5 (WTB Dec. 16, 2009).

⁷ Second Protective Order at 1 (¶ 1).

⁸ *Id.* at 2-3 (¶ 5) (emphasis added).

Three of the individuals whose Acknowledgements are submitted with the Peres Letter do not meet this definition of Outside Consultants and thus should not be given access to the highly sensitive information filed under the Second Protective Order.

Consultant Barber: CWA designee Randy Barber is not entitled to access to the Highly Confidential information protected by the Second Protective Order. First, although not a CWA employee, Mr. Barber regularly consults with “labor unions and pension funds,” and “specializes in complex financial and operational analyses of companies and industries, often in the context of collective bargaining or in support of clients’ strategic or policy interests.”⁹ According to his own sworn testimony, he has provided clients with analyses of industries including telecommunications and internet access and content providers.¹⁰ As such, he provides “advice about or [participates] in the business decisions of the client” and/or “the analysis underlying those business decisions” and therefore does not meet the definition of “Outside Consultant[.]” set out in the Second Proprietary Order.

Second, in connection with state regulatory proceedings related to this transaction, Mr. Barber previously participated in violating a protective order by misusing confidential information. Mr. Barber served as an Outside Consultant for the International Brotherhood of Electrical Workers (“IBEW”) in the Oregon Public Utility Commission (“Oregon PUC”) proceeding regarding the Verizon-Frontier transaction. IBEW and Mr. Barber received highly confidential information through discovery in the Oregon proceeding. Despite having signed a declaration under penalty of perjury agreeing “not to use or disclose the Highly Confidential Information for any purpose other than the purposes of preparation for and conduct of this [Oregon] proceeding,” Mr. Barber relied on the Oregon highly confidential information in an affidavit specifically prepared for and filed in a separate proceeding before the Pennsylvania Public Utility Commission.¹¹ The Oregon PUC found that Mr. Barber’s “reference to the highly confidential document *and its use in the preparation of the cited pleading and accompanying affidavit* in the Pennsylvania Dockets clearly constitutes a violation of [the] Protective Order”¹² Based on this conduct and on IBEW’s use of Oregon highly confidential information to “attempt[] to use the regulatory process to gain information on matters outside the scope of the proceeding,” the Oregon PUC terminated IBEW’s participation in the Oregon proceeding.¹³ Mr.

⁹ Direct Testimony of Randy Barber, Case No. 09-0871-T-PC, West Virginia Public Service Commission, at 2-3 (filed November 16, 2009). An excerpt of Mr. Barber’s Testimony is attached as Attachment 1.

¹⁰ *Id.* See also Verizon Communications Inc. and Frontier Communications Corporation, Joint Application for an Order Declining to Assert Jurisdiction, or, in the alternative, to Approve the Indirect Transfer of Control of Verizon Northwest Inc., Oregon Public Utility Commission, UM 1431, Order No. 09-409 (Oct. 14, 2009) (“Oregon PUC Order”), at Appx. A. A copy of this Order is attached as Attachment 2.

¹¹ Oregon PUC Order.

¹² *Id.* (italics original).

¹³ *Id.*

Barber's failure to abide by his obligations to protect confidential information in connection with this same transaction warns against permitting him access to any Highly Confidential Information here.

Inside Consultants Goldman and Peres: CWA employees Debbie Goldman and Kenneth Peres are also not entitled to access to Highly Confidential information under the Second Protective Order. The Second Protective Order generally limits the dissemination of Highly Confidential Information to Outside Counsel and Outside Consultants.¹⁴ Although the Second Protective Order permits certain in-house experts employed by a "non-commercial party" to obtain access to Highly Confidential Information,¹⁵ CWA is not a non-commercial party in this context. On behalf of its members, CWA routinely negotiates commercial contracts with communications companies, including Verizon and Frontier. These negotiations include wage, benefits, working conditions and employment security provisions of collective bargaining agreements.¹⁶ In particular, CWA (together with IBEW), represent about 6,500 workers employed by Verizon in the areas impacted by the pending transfer of control and approximately 2,800 workers employed by Frontier.¹⁷ In fact, CWA is currently involved in negotiations with both Frontier and Verizon, with a number of additional contracts within Frontier's post-acquisition footprint expiring in 2010 and 2011. The financial model covered by the Second Protective Order contains holding company level financial information, as well as separately stated information for the legacy Frontier operations and the operations being acquired from Verizon.¹⁸ Unlike a public interest organization or a truly non-commercial entity, CWA is in a position to use the information in Frontier's financial model to inform its negotiating strategies against Frontier and/or Verizon as it negotiates commercial contracts with either or both. Disclosure of the Highly Confidential Information protected by the Second Protective Order, including knowledge of expected cash flows and investment plans, to in-house experts of CWA would provide CWA with a competitive advantage in these negotiations. Thus, like a supplier such as an equipment provider, CWA should be considered a "commercial" party for the purposes of the Second Protective Order.

Moreover, even if the Commission should determine that CWA has the status of a non-commercial party, Ms. Goldman and Mr. Peres should only be permitted access to highly

¹⁴ Second Protective Order at 3 (¶ 5).

¹⁵ *Id.*

¹⁶ CWA Profile & History, available at <http://www.cwa-union.org/about/profile.html>. As explained by CWA's website, CWA represents over 700,000 individuals, many of whom are employed in the communications industry. Among major employers of CWA members are AT&T, GTE, the Regional Bell telephone companies, Lucent Technologies/Bell Labs, General Electric, NBC and ABC television networks, the Canadian Broadcasting Corp.

¹⁷ Comments of CWA and IBEW at 1 (filed Sept. 21, 2009).

¹⁸ Letter from John T. Nakahata, Wiltshire & Grannis LLP, Counsel to Frontier, and Michael E. Glover, Counsel to Verizon at 2 (Dec. 23, 2009).

confidential information subject to the Second Protective Order if they certify that they do not participate in, or provide support to, collective bargaining. Although both previously stated in their acknowledgements under the First Protective Order that they are not involved in “competitive decision-making,” as that term was defined in paragraph 4, the reference in that definition to a “competitor” could be confusing as applied here. Thus, to avoid confusion, and to ensure that this information cannot be used with respect to collective bargaining, Ms. Goldman and Mr. Peres should only be allowed access, if at all, if they are not involved in and do not provide support for collective bargaining.¹⁹

For the foregoing reasons, Verizon and Frontier respectfully request that the Commission dismiss or deny the Second Protective Order Acknowledgments of Randy Barber, Debbie Goldman and Kenneth Peres in this proceeding. Please direct any questions about this objection to the undersigned attorneys for Verizon and Frontier.

Respectfully submitted,

/s/ Michael E. Glover
Michael E. Glover
Karen Zacharia
Katharine R. Saunders
Counsel to Verizon
VERIZON
1320 North Courthouse Road
9th Floor
Arlington, VA 22201
(703) 351-3097

/s/John T. Nakahata
John T. Nakahata
Madeleine V. Findley
Darah A. Smith
Counsel to Frontier Communications
Corporation
WILTSHIRE & GRANNIS LLP
1200 Eighteenth Street NW
Suite 1200
Washington, DC 20036
(202) 730-1320

¹⁹ Ms. Goldman’s bio indicates that her duties at CWA include “providing support to the union's collective bargaining and organizing program.” See http://www.apr.org/events/2009/bios_031809.html.

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of February 2010, I caused to be served on the persons listed below a true and correct copy of the foregoing Objection to Request for Access to Second Protective Order Information by Frontier Communications Corporation and Verizon Communications Inc. in WC Docket No. 09-95 by mailing copies thereof via first class U.S. mail, postage pre-paid, or electronic mail to the addresses listed below:

Debbie Goldman
Kenneth Peres
George Kohl
Communications Workers of America
501 Third Street N.W.
Washington, D.C. 20001
dgoldman@cwa-union.org
kperes@cwa-union.org

/s/ Darah A. Smith
Darah A. Smith

Attachment 1

**PUBLIC SERVICE COMMISSION
OF WEST VIRGINIA
CHARLESTON**

Case No. 09-0871-T-PC

**Citizens Telecommunications Company
of West Virginia, dba Frontier Communications
of West Virginia and Verizon West Virginia Inc.
Joint Petition for consent and approval of
the transfer of Verizon's local exchange
and long distance business in West
Virginia to companies to be owned and
controlled by Frontier Communications**

**Direct Testimony of Randy Barber
on Behalf of the Communications Workers of America, AFL-CIO**

November 16, 2009

PUBLIC (REDACTED) VERSION

Table of Contents

Introduction	1
Background	2
Organization of Testimony	5
Summary of Testimony	5
Overview of Application and Document Review	7
Concerns with Frontier and the Proposed Transaction: Unrealistic Savings and Illusory Benefits	12
Frontier Lacks Financial Fitness: Frontier's Unsustainable, High-Risk Business Model	17
A Frontier Acquisition Would Significantly Weaken VSTO (Verizon's Operations in West Virginia and 13 Other States).....	30
Frontier's Highly Aggressive And Unrealistic Financial Projections Risk Overestimating Future Revenues And Underestimating Future Expenses, Possibly By Significant Amounts	34
Frontier Plans to Reduce Capital Expenditures	49
Putting it Together: Frontier is Not Financially Fit to Own and Operate VSTO.....	55
Conclusion	60

1 **INTRODUCTION**

2 **Q. Please state your name and business address.**

3 A. My name is Randy Barber. My office address is: Suite 204, 6935 Laurel Avenue,
4 Takoma Park, Maryland 20912.

5 **Q. By whom are you employed and in what capacity?**

6 A. I am employed by the Center for Economic Organizing and serve as its president.

7 **Q. On whose behalf are you testifying in this case?**

8 A. I am testifying on behalf of the Communications Workers of America.

9 **Q. Why is CWA interested in this case?**

10 A. CWA represents approximately 1,750 employees of Verizon-WV and a number of
11 employees of Frontier. These employees represented by CWA include operators,
12 consultants, and system technicians who work to provide telecommunications service in
13 West Virginia. CWA is concerned about the financial health of its employer, as well as
14 the employer's ability and commitment to safely and reliably operate and maintain that
15 company's telecommunications network in West Virginia.

16 **Q. Have you been engaged to offer expert analysis and testimony on the proposed**
17 **Frontier-Verizon transaction in other regulatory proceedings?**

18 A. Yes. I have been jointly retained by CWA and the International Brotherhood of Electrical
19 Workers ("IBEW") to provide analyses and testimony concerning this proposed

20 transaction. I expect to participate in the unions' interventions before commissions in
21 several other states.

22 **BACKGROUND**

23 **Q. When you were engaged by CWA on this case, what were you asked to do?**

24 A. I have been asked to provide expert analysis and testimony, focusing on financial issues.

25 **Q. Do you have experience in rendering that type of opinion as an expert witness?**

26 A. Yes. While I do not specialize in being an expert witness, I have performed that function
27 on several occasions, and I have assisted experts and attorneys in the financial and
28 analytical aspects of judicial, quasi-judicial and regulatory proceedings. Most relevantly,
29 I served as the financial expert for CWA and the IBEW in two recent telecommunications
30 transactions: FairPoint Communications' acquisition of Verizon's Northern New
31 England landline business, and the merger of Embarq and CenturyTel that formed
32 CenturyLink.

33 **Q. What in your educational and employment background has qualified you to provide**
34 **an expert opinion on financial issues such as those presented in this case?**

35 A. After attending Dartmouth College, I have worked as a financial consultant for more than
36 25 years. I specialize in complex financial and operational analyses of companies and
37 industries, sometimes in the context of collective bargaining, other times in support of
38 clients' strategic or policy interests. My clients tend to be labor unions and pension
39 funds. I also regularly analyze a wide range of issues impacting specific employee benefit

40 plans. Among the companies that I have analyzed are Alcatel, Avaya, AT&T, Boeing,
41 Catholic Healthcare West, Celestica, CenturyTel, Columbia/HCA, Eastern Air Lines,
42 Edison Schools, Embarq, FairPoint Communications, Idearc, Lucent Technologies, MCI,
43 Oregon Steel, Qwest, RH Donnelley, Sprint, Sylvan Learning Systems, Texas Air
44 Corporation, TIAA-CREF, United Air Lines, the United States Postal Service, Verizon,
45 and Wal-Mart. More broadly, I have provided clients with various analyses of such
46 industries as aerospace manufacturing, air transport, for-profit education, newspaper
47 publishing, off-road vehicle manufacturers, and telecommunications and internet access
48 and content providers.

49 In addition, I have performed a wide range of analyses of private sector pension
50 plans and public employee retirement systems across the country. These include
51 investigations into factors associated with under-funding, integration of two or more
52 benefit plans, efforts to improve the operations of benefit plans, evaluations of proposed
53 investment and funding mechanisms, and proposals to convert defined benefit plans into
54 defined contribution plans. A number of the activities mentioned above have taken the
55 form of joint labor-management initiatives in which I served as the union expert, paired
56 with one or more management experts. Some of these projects included work with
57 AT&T, Lucent Technologies, and the League of Voluntary Hospitals and Nursing Homes
58 (New York City and environs).

59 **Q. Please summarize your experience as an expert financial witness.**

60 A. As mentioned above, I was an expert financial witness in the FairPoint/Verizon
61 transaction before the regulatory commissions in Maine, New Hampshire, and Vermont.
62 In addition, I have testified as an expert witness (either at trial or by deposition) in several
63 judicial proceedings and arbitrations. These have included, for example, a class action
64 law suit involving A.P. Moller-Maersk/BTT, a National Mediation Board Single Carrier
65 proceeding, the Big Sky Airlines Bankruptcy, and an Examiner's Investigation into the
66 Bankruptcy of Eastern Air Lines. I have also served as an expert consultant in various
67 proceedings where it was not necessary for me to testify, such as an airline fitness
68 investigation involving ATX, a cross-border airline merger investigation (American
69 Airlines-Canadian Airlines), and a major CWA/AT&T arbitration.

70 **Q. What is the scope of your testimony?**

71 A. I am advised by counsel that the West Virginia Supreme Court of Appeals has long held
72 that the primary purpose of the PSC is to "serve the interests of the public". In addition,
73 as this Commission noted in its Order of July 23, 2009 in this matter, in order to
74 consent to this proposed acquisition the Commission "must find that the terms of and
75 conditions of the transactions are reasonable, that neither party is given an undue
76 advantage over the other, and that the transactions do not adversely affect the public in
77 this state."¹

¹ Order at page 3. see W.Va. Code section 24-2-12

Attachment 2

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 1431

In the Matter of

VERIZON COMMUNICATIONS INC.
and FRONTIER COMMUNICATIONS
CORPORATION,

Joint Application for an Order Declining to
Assert Jurisdiction, or, in the alternative, to
Approve the Indirect Transfer of Control of
VERIZON NORTHWEST INC.

ORDER

**DISPOSITION: MOTION GRANTED; INTERVENOR PARTICIPATION
TERMINATED; PARTY STATUS REVOKED**

In this Order, the Public Utility Commission of Oregon (Commission) terminates the participation of the International Brotherhood of Electrical Workers, Local 89 (IBEW), in this proceeding and revokes its status as a party hereto.

BACKGROUND

At the commencement of this proceeding, IBEW was granted party status with certain conditions. In granting IBEW's petition to intervene, the Administrative Law Judge (ALJ) noted that IBEW's improper behavior had led to its dismissal as a party in a recent proceeding before the Washington Utility and Transportation Commission (WUTC),¹ and stated:

I am concerned, however, about IBEW's apparent belief that its conduct in the WUTC case was proper given its role as a private litigant * * *. The use of the regulatory process by one party against another to extract concessions regarding matters exogenous to a case would constitute a

¹ WUTC found that IBEW used its participation in the Embarq Corporation/CenturyTel, Inc., asset transfer case to improperly extract labor concessions from the applicants via a side agreement that prompted IBEW to withdraw from the case. The WUTC rejected the agreement and dismissed IBEW from the proceeding, noting "its participation is not in the public interest." (Docket UT-082119, Order 05, Service Date May 28, 2009, par. 95.) Among other things, the WUTC called into question the credibility of counsel and representations made that "were disingenuous at best." (*Id.*, par. 69.) IBEW argued that the WUTC was in error.

serious abuse that must be guarded against. I grant IBEW's petition under OAR 860-012-0001, but throughout the course of this proceeding will entertain a motion by the Applicants to terminate IBEW's participation upon a showing that IBEW has attempted to use the regulatory process to influence the Applicants in areas beyond the scope of the proceeding * * *. A finding by the Commission that IBEW has acted in a manner inconsistent with this ruling shall be grounds for its dismissal from the case.²

On July 17, 2009, the Commission entered Order No. 09-273, a Superseding Highly Confidential Protective Order (Protective Order), setting forth the conditions under which parties could view highly sensitive information (Appendix A). IBEW executed signatory pages indicating its pledge to comply with the terms of the Protective Order, including among its signatories, acting on behalf of IBEW, Randy Barber, self-identified as an "Outside expert" and Scott Rubin, self-identified as "Outside counsel" in the instant proceeding (Appendix B).³

Among the provisions of the Protective Order are the following relevant to the matter before us:

9. Designated counsel and consultants will each maintain the Highly Confidential documents and information and any notes reflecting their contents in a secure location to which only designated counsel and consultants have access. No additional copies will be made, except for use as part of prefiled testimonies or exhibits or during the hearing, and then such copies are also subject to the provisions of this Superseding Order. The Commission's Administrative Hearings Division shall store the Highly Confidential information in a locked cabinet dedicated to the storage of Confidential Information.

* * * * *

11. Any testimony or exhibits prepared that include or reflect Highly Confidential Information must be maintained in the secure location until filed with the Commission or removed to the hearing room for production under seal and under

² ALJ Ruling, July 2, 2009, at 2-3.

³ As will be discussed further below, Mr. Rubin is also counsel to the IBEW in a related proceeding before the Pennsylvania Public Utility Commission (PPUC). *Application of Verizon North Inc. for Any Approvals Required Under the Public Utility Code for Transactions Related to the Restructuring of the Company in a Pennsylvania-Only Operation and Notice of Affiliate Transaction*, Docket Nos. A-2009-2111330, A-2009-2111331, and A-2009-2111337. (Pennsylvania Dockets).

circumstances that will ensure continued protection from disclosure to persons not entitled to review Highly Confidential documents or information. Counsel will provide prior notice (at least one business day) of any intention to introduce such material at hearing or refer to such materials in cross-examination of a witness. The presiding officer(s) will determine the process for including such documents or information following consultation with the parties.

12. The designation of any document or information as Highly Confidential may be challenged by motion, and the classification of the document or information as Highly Confidential will be considered in chambers by the presiding officer(s).

* * * * *

16. All persons who are given access to Highly Confidential Information by reason of this Superseding Order may not use or disclose the Highly Confidential Information for any purpose other than the purposes of preparation for and conduct of this proceeding, and must take all necessary precautions to keep the Highly Confidential Information secure. Disclosure of Highly Confidential Information for purposes of business competition is strictly prohibited.

MOTION TO TERMINATE PARTICIPATION

On September 17, 2007, counsel for the Applicant Verizon Communications Inc. (Verizon) filed a motion to terminate IBEW's participation in this case (Motion). Verizon alleges two violations of Commission Orders by IBEW. First, Verizon asserts that IBEW violated the terms of the Protective Order by using discovery obtained in this proceeding to advocate its position in the Pennsylvania Dockets and, second, by seeking to use the discovery process in this case to obtain labor-related information not relevant to its role in the case. In support of its allegations with respect to the Pennsylvania Dockets, Verizon submitted copies of a transmittal letter from Scott Rubin to the PPUC, a Motion for Leave to Reply to Verizon's Opposition to Petition for Interlocutory Review (Pennsylvania Motion) and an Affidavit of Randy Barber (Barber Affidavit) (Appendix C).

Regarding the first assertion, Verizon explains that IBEW filed a pleading before the PPUC that described the contents of a document that Verizon had designated as confidential and provided to IBEW in response to a discovery request in this docket. Verizon further explains that, in its pleading before the PPUC, IBEW acknowledged that IBEW received

the document through discovery in Oregon and that the document had been designated as confidential.

Regarding the second assertion, Verizon contends that IBEW propounded discovery requests soliciting information that could be used for labor negotiations. These include inquiring about seniority levels of employees, the potential for lay-offs, and questions on collective bargaining agreement obligations.

On September 18, 2009, IBEW filed an answer opposing Verizon's motion (Answer). With respect to the first allegation, IBEW does not dispute Verizon's version of the facts, but asserts that its actions do not violate the Protective Order. First, IBEW claims that the definition of Highly Confidential information is narrow in scope, limited to trade secrets, confidential research development, or commercial information whose disclosure would present a risk of business harm and would exclude the shareholder information gleaned from the documents declared confidential. Second, IBEW claims that it didn't actually use the document. Rather, it claims that it merely identified the existence of documents supporting the statement on stockholder data submitted in the Pennsylvania Dockets by Mr. Barber, and that Mr. Barber's statement—offered to demonstrate that Verizon had the stockholder information in its possession—was in fact a summary of information publicly available from the Securities and Exchange Commission of the United States.⁴ Nowhere in its Answer does IBEW indicate that it sought to challenge the confidential treatment of the stockholder information under the provisions of paragraph 12 of the Protective Order.

In response to allegations that IBEW attempted to use the discovery process to obtain information in ways that exceeded the scope of the docket, IBEW contends that the improper questions were included inadvertently and that e-mail correspondence from IBEW did not include the four improper data requests. "Since that initial oversight, counsel has been more vigilant in attempting to ensure that questions about employee matters are not asked in discovery in Oregon."⁵ IBEW also asserts that, since the Pennsylvania Dockets were initiated prior to IBEW's intervention petition in Oregon, the Pennsylvania filing was not made to influence the applicant, but in furtherance of the labor unions' efforts to have the PPUC review the proposed transaction for its effects on Frontier's operation in Pennsylvania.⁶ Finally, IBEW argues that if there were a "technical violation," sanctions should be imposed against counsel and not the client, as the filings were made on behalf of different clients.⁷

On September 21, 2009, Verizon filed a Reply in Support of Motion to Enforce Commission Orders (Reply). In its Reply, Verizon asserts that IBEW provided inaccurate claims in its Answer and failed to rebut the allegations in the Motion. Specifically, Verizon states that IBEW's parsing of the word "use" in conjunction with the highly confidential information attempts to draw meaningless distinctions; IBEW told the PPUC that it had obtained "newly

⁴ Answer at 2-3. To support its claim that the information in the Barber affidavit is not covered by the Protective Order, IBEW notes that Verizon appended it to its pleading without redacting the contents.

⁵ *Id.* at 5.

⁶ *Id.*

⁷ *Id.* at 6.

provided information” through the Oregon discovery process and asked the PPUC to consider it in a ruling on a request for interlocutory review.⁸

Verizon also voices its skepticism, supported by documentation, at IBEW’s claim that the four labor-related discovery questions were submitted through inadvertence:

As shown in a copy of the email from IBEW’s counsel dated July 21 attached as Attachment 1, Request No. 30 was among the listed requests that IBEW sought, and did, pursue with counsel from the Applicants on the referenced conference call. Moreover, the notion that IBEW did not violate the Limitation Ruling because it backed off pursuing discovery requests in the face of objections from the Applicants (*see* IBEW Answer at 5) is wrong. It was the original requests themselves, regardless of IBEW’s ultimate decision on whether to pursue them, that constituted the ‘attempt to use the regulatory process to influence the Applicants in areas beyond of the scope of the proceeding.’⁹

With respect to sanctioning counsel, Verizon notes that the ALJ had already indicated the remedy that the Commission would invoke in the case of a violation of its orders by IBEW and suggests that any sanctions of counsel should be in addition to, rather than in lieu of, sanctions against IBEW directly.¹⁰

DISCUSSION

IBEW acknowledges in its Answer that “Verizon’s basic recitation of the facts is accurate” but asserts that “those facts do not show that there has been a violation of the Order.”¹¹ The only factual question in dispute, as shown by a conflict between the Answer at 4 and the Reply at 3, is whether the four labor discovery requests, Nos. 28 through 31,¹² “were not listed among the matters that IBEW’s counsel wanted to pursue with Applicants” as IBEW asserts.

Based upon our review of the pleadings and the factual statements therein and the supporting documentary evidence supplied by the parties, we find that IBEW provided information designated as highly confidential to the PPUC and, in so doing, disclosed information and made it publicly available. Although not providing the PPUC with the documents themselves, IBEW, in violation of the stewardship provisions of paragraph 9 of

⁸ Reply at 2.

⁹ *Id.* at 3. The e-mail from IBEW counsel, dated July 21, 2009, to which both parties have referred, states in pertinent part: “I would like to schedule a time to discuss your objections to IBEW data requests 16 (a, b and c), 17, 23, 30, 34 and 37 in the Oregon case. I would like to better understand your basis for objecting and explain why I believe the requests are properly within the scope of discovery in this case.”

¹⁰ *Id.* at 4.

¹¹ e.g., at 2: “Of course, IBEW acknowledges that its counsel (and its consultant, on advice of counsel) referred to the document (without disclosing its contents) in the Pennsylvania proceeding.”

¹² The four labor-related data requests deemed by both parties to fall outside of the scope of this proceeding appear on Attachment 3 at 2 of the Verizon Motion. Request 30 is, by far, the most detailed and extensive of the four.

the Protective Order, gave access to “information and any notes *reflecting their contents* * * * to which only designated counsel and consultants have access.”¹³

Furthermore, we find that the reference to the highly confidential document *and its use in the preparation of the cited pleading and accompanying affidavit* in the Pennsylvania Dockets clearly constitutes a violation of Protective Order paragraph 16 which states that a signatory “may not use or disclose the Highly Confidential Information for any purpose other than the purposes of preparation for and conduct of this proceeding.”

We turn finally to the issue of IBEW’s data requests on labor-related matters. Although IBEW counsel acknowledges their impropriety but asserts that the original questions were unintentionally submitted (not having been intended for Oregon, but only other states), the written evidence referred to by both parties indicates otherwise. First, Data Request No. 30 asks for Oregon-specific information by name in four of its five subparts. Second, Data Request No. 30, with its Oregon-specific information, is pursued in the July 21, 2009, e-mail from IBEW counsel.

In his Ruling granting IBEW party status in this proceeding, the ALJ in this docket unequivocally stated “throughout the course of this proceeding [I] will entertain a motion by the Applicants to terminate IBEW’s participation upon a showing that IBEW *has attempted to use the regulatory process to influence the Applicants in areas beyond the scope of the proceeding* * * *. A finding by the Commission that IBEW has acted in a manner inconsistent with this ruling shall be grounds for its dismissal from the case.” (Emphasis added.) Success in such an attempt is not a prerequisite ground for such dismissal.

The documentary evidence supports a finding that IBEW attempted to use the regulatory process to gain information on matters outside the scope of the proceeding. The specificity of Data Request No. 30, affirmed by the July 21 e-mail from IBEW counsel, conclusively undercuts any claim that the request was one of a blanket request sent to several states and that counsel failed to remove Oregon from the list due to inadvertence.¹⁴

CONCLUSION

Despite a clear admonition from the Commission at the outset of IBEW’s participation in this case, that IBEW comply with the scope and use requirements of the regulatory process, IBEW has violated those requirements. Consistent with the warning given by the ALJ in his Ruling of July 2, 2009, the Commission terminates IBEW’s participation in this case. A copy of this Order will be provided to the Oregon State Bar and the Pennsylvania State Bar for possible disciplinary action.

¹³ Order No. 09-273 (emphasis added). *See Johnson v. Eugene Emergency Physicians, PC*, 159 Or. App 167, 169 974 P 2d 803 (1999); “At the outset, we reject plaintiff’s argument that she did not violate the protective order because she did not reveal the documents. For plaintiff to argue that the order prevented disclosure of the documents but allowed disclosure of the contents of the documents defies the clear import of the order.”


¹⁴ Although we decline to make specific findings with respect to IBEW counsel’s state of mind, we find resonance in the WUTC’s comments referred to in Footnote 1, *supra*.


ORDER

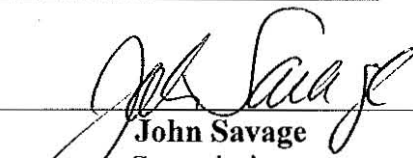
IT IS ORDERED that:

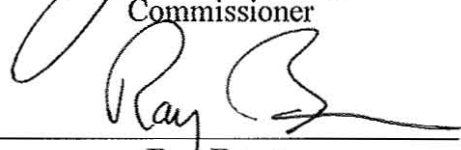
1. The Motion to Enforce Commission Orders filed by Verizon Communication Inc. is GRANTED.
2. The status of the International Brotherhood of Electrical Workers, Local 89, as an intervening party in this proceeding granted pursuant to OAR 860-012-0001 is hereby REVOKED.
3. With respect to documentation and information in the possession of the International Brotherhood of Electrical Workers, Local 89, no later than ten (10) days from the date of this Order:
 - a. All non-public documentation and information obtained pursuant to its status as an intervening party in this proceeding shall be forfeited to the Public Utility Commission of Oregon, and the International Brotherhood of Electrical Workers, Local 89, shall have no rights thereto.
 - b. Any copies, notes, summaries, and digests of the non-public documentation and information in whatever form, physical or electronic, in possession of counsel, employee, executive, officer, agent, contractor, or other person associated with the party, shall be destroyed, and counsel shall file an affidavit attesting to such destruction.
 - c. The restrictions set forth in the Superseding Highly Confidential Protective Order shall remain in full force and effect.

Made, entered, and effective OCT 14 2009.



Lee Beyer
Chairman




John Savage
Commissioner


Ray Baum
Commissioner

A party may appeal this Order by filing a Petition for Review with the Court of Appeals in compliance with ORS 183.480-183.484.

SUPERSEDING HIGHLY CONFIDENTIAL PROTECTIVE ORDER

UM 1431

Scope of this Order-

1. This order replaces and supersedes Order No. 09-271, in its entirety, and is hereafter referred to as the "Superseding Order." This order governs the acquisition and use of "Highly Confidential Information" in this proceeding.

Definition-

2. "Highly Confidential Information" is competitively-sensitive confidential information that falls within the scope of ORCP 36(C)(7) ("a trade secret or other confidential research, development, or commercial information"), the disclosure of which presents risk of business harm.

Designation and Disclosure of Highly Confidential Information-

3. Intervenor in this proceeding may include competitors, or potential competitors. Moreover, information relevant to the resolution of this case is expected to include sensitive competitive information. Parties to this proceeding may receive discovery requests that call for the disclosure of highly confidential documents or information, the disclosure of which imposes a significant risk of competitive harm to the disclosing party or third parties. Parties may designate documents or information they consider to be Highly Confidential, and such documents or information will be disclosed only in accordance with the provisions of this Superseding Order.

4. Parties must carefully scrutinize responsive documents and information and limit the amount of information they designate as Highly Confidential Information to only information that truly might impose a serious business risk if disseminated without the heightened protections provided in this Superseding Order. The first page and individual pages of a document determined in good faith to include Highly Confidential Information must be marked by a stamp that reads:

HIGHLY CONFIDENTIAL – USE RESTRICTED
PER SUPERSEDING HIGHLY CONFIDENTIAL
PROTECTIVE ORDER NO. 09-273 IN DOCKET
UM 1431.

5. Placing a "Highly Confidential" stamp on the first page of a document will not serve to protect the entire contents of a multi-page document. To ensure protection, each page that contains "Highly Confidential" material must be printed on green paper, marked separately as "Highly Confidential," and provided under seal. Multiple pages from a document containing "Highly Confidential" information may be sealed in the same envelope. A separate envelope must be provided for each document or filing. An original and five copies, each separately sealed, must be provided to the Commission. The redacted version of the document must be highlighted or otherwise marked to show where the "Highly Confidential" material has been redacted.

6. For each person for whom access to Highly Confidential Information is sought, parties must submit to the party who designated the material as Highly Confidential and file with the Commission a Superseding Highly Confidential Information Agreement, in the form prescribed by this Superseding Order, certifying that the person requesting access to Highly Confidential Information:

Has a need to know for the purpose of presenting its party's case in this proceeding and is not engaged in developing, planning, marketing, or selling products or services or determining the costs thereof to be charged or potentially charged to customers; and

Has read and understands, and agrees to be bound by, the terms of the General Protective Order in this proceeding, as well as the terms of this Superseding Highly Confidential Protective Order.

7. The restrictions in paragraph 6 do not apply to Commission Staff employees or attorneys in the Office of the Attorney General representing Commission Staff. However, Commission Staff must submit the Superseding Highly Confidential Information Agreement, in the form prescribed by this Superseding Order, for any external experts or consultants they wish to have review the Highly Confidential Information.

8. Any party may object in writing to the designation of any individual counsel or consultant as a person who may review Highly Confidential documents or information. The objection must be filed within 10 days of the filing of the Superseding Highly Confidential Information Agreement. Any such objection must demonstrate good cause, supported by affidavit, to exclude the challenged counsel or consultant from the review of Highly Confidential documents or information. Written response to any objection must be filed within five days after filing of the objection. If, after receiving a written response to a party's objection, the objecting party still objects to disclosure of the Highly Confidential Information to the challenged individual, the Commission shall determine whether the Highly Confidential Information must be disclosed to the challenged individual.

9. Designated counsel and consultants will each maintain the Highly Confidential documents and information and any notes reflecting their contents in a secure location to which only designated counsel and consultants have access. No additional copies will be made, except for use as part of prefiled testimonies or exhibits or during the hearing, and then such copies are also subject to the provisions of this Superseding Order. The Commission's Administrative Hearings Division shall store the Highly Confidential information in a locked cabinet dedicated to the storage of Confidential Information.

10. Staff of designated counsel and staff of designated consultants who are authorized to review Highly Confidential Information may have access to Highly Confidential documents or information for purposes of processing the case, including but not limited to receiving and organizing discovery, and preparing prefiled testimony, hearing exhibits, and briefs. Counsel and consultants are responsible for appropriate supervision of their staff to ensure the protection of all confidential information consistent with the terms of this Superseding Order.

11. Any testimony or exhibits prepared that include or reflect Highly Confidential Information must be maintained in the secure location until filed with the Commission or removed to the hearing room for production under seal and under circumstances that will ensure continued protection from disclosure to persons not entitled to review Highly Confidential documents or information. Counsel will provide prior notice (at least one business day) of any intention to introduce such material at hearing or refer to such materials in cross-examination of a witness. The presiding officer(s) will determine the process for including such documents or information following consultation with the parties.

12. The designation of any document or information as Highly Confidential may be challenged by motion, and the classification of the document or information as Highly Confidential will be considered in chambers by the presiding officer(s).

13. Highly Confidential documents and information will be provided to Commission Staff and the Commission under the same terms and conditions of this Superseding Order and as otherwise provided by the terms of the General Protective Order filed in this proceeding.

Appeal/Subsequent Proceedings-

14. Sealed portions of the record in this proceeding may be forwarded to any court of competent jurisdiction for purposes of an appeal or to the Federal Communications Commission (FCC), but under seal as designated herein for the information and use of the court or the FCC. If a portion of the record is forwarded

to a court or the FCC, the providing party shall be notified which portion of the sealed record has been designated by the appealing party as necessary to the record on appeal or for use at the FCC.

Summary of Record-

15. If deemed necessary by the Commission, the providing party shall prepare a written summary of the Confidential Information referred to in the Superseding Order to be placed on the public record.

Preservation of Confidentiality-

16. All persons who are given access to Highly Confidential Information by reason of this Superseding Order may not use or disclose the Highly Confidential Information for any purpose other than the purposes of preparation for and conduct of this proceeding, and must take all necessary precautions to keep the Highly Confidential Information secure. Disclosure of Highly Confidential Information for purposes of business competition is strictly prohibited.

Duration of Protection-

17. The Commission shall preserve the confidentiality of Highly Confidential Information for a period of five years from the date of the final order in this docket, unless extended by the Commission at the request of the party desiring confidentiality. The Commission shall notify the party desiring confidentiality at least two weeks prior to the release of Highly Confidential Information. This Superseding Order shall continue in force and effect after docket UM 1431 is closed, as set out in this paragraph.

Destruction After Proceeding-

18. Counsel of record may retain memoranda, pleadings, testimony, discovery, or other documents containing Highly Confidential Information to the extent reasonably necessary to maintain a file of this proceeding or to comply with requirements imposed by another governmental agency or court order. The information retained may not be disclosed to any person. Any other person retaining Highly Confidential Information or documents containing such Highly Confidential Information must destroy or return it to the party desiring confidentiality within 90 days after final resolution of this proceeding unless the party desiring confidentiality consents, in writing, to retention of the Highly Confidential Information or documents containing such Highly Confidential Information. This paragraph does not apply to the Commission or its Staff.

Additional Protection-

19. The party desiring additional protection may move for any of the remedies set forth in ORCP 36(C). The motion shall state:

- a. The parties and persons involved;
- b. The exact nature of the information involved;
- c. The exact nature of the relief requested;
- d. The specific reasons the requested relief is necessary;
and
- e. A detailed description of the intermediate measures, including selected redaction, explored by the parties and why such measures do not resolve the dispute.

The information need not be released and, if released, may not be disclosed pending the Commission's ruling on the motion.

SUPERSEDING HIGHLY CONFIDENTIAL INFORMATION AGREEMENT
DOCKET NO. UM 1431

I, _____, as

- ☐ In-house attorney
- ☐ In-house expert
- ☐ Outside counsel
- ☐ Outside expert

in this proceeding for _____ (a party to this proceeding) hereby declare under penalty of perjury under the laws of the State of Oregon that the following are true and correct:

- a. I have a need to know for the purpose of presenting my party's case in this proceeding and am not engaged in developing, planning, marketing, or selling products or services or determining the costs thereof to be charged or potentially charged to customers; and
- b. I have read and understand, and agree to be bound by, the terms of the General Protective Order in this proceeding, as well as the terms of this Superseding Highly Confidential Protective Order.

Full Name (Printed)

Signature

Date

City/State where this Agreement was signed

Employer

Position and Responsibilities

Permanent Address

SUPERSEDING HIGHLY CONFIDENTIAL INFORMATION AGREEMENT
DOCKET NO. UM 1431

I, Scott J. Rubin, as

- ☐ In-house attorney
☐ In-house expert
☒ Outside counsel
☐ Outside expert

in this proceeding for IBEW Local 89 (a party to this proceeding) hereby declare under penalty of perjury under the laws of the State of Oregon that the following are true and correct:

- a. I have a need to know for the purpose of presenting my party's case in this proceeding and am not engaged in developing, planning, marketing, or selling products or services or determining the costs thereof to be charged or potentially charged to customers; and
- b. I have read and understand, and agree to be bound by, the terms of the General Protective Order in this proceeding, as well as the terms of this Superseding Highly Confidential Protective Order.

Scott J. Rubin
Full Name (Printed)

Scott J. Rubin
Signature

7/17/09
Date

Bloomsburg, PA
City/State where this Agreement was signed

Self-employed
Employer

Attorney
Position and Responsibilities

333 Oak Lane
Bloomsburg PA 17815
Permanent Address

SUPERSEDING HIGHLY CONFIDENTIAL INFORMATION AGREEMENT
DOCKET NO. UM 1431

I, Randy Barber, as

- ☐ In-house attorney
- ☐ In-house expert
- ☐ Outside counsel
- ☒ Outside expert

in this proceeding for IBEW Local 89 (a party to this proceeding) hereby declare under penalty of perjury under the laws of the State of Oregon that the following are true and correct:

- a. I have a need to know for the purpose of presenting my party's case in this proceeding and am not engaged in developing, planning, marketing, or selling products or services or determining the costs thereof to be charged or potentially charged to customers; and
- b. I have read and understand, and agree to be bound by, the terms of the General Protective Order in this proceeding, as well as the terms of this Superseding Highly Confidential Protective Order.

Randy Barber

Full Name (Printed)


 Signature

July 18, 2009

Date

Takoma Park, MD

City/State where this Agreement was signed

Center for Economic Organizing

Employer

6935 Laurel Ave., # 204

President

Position and Responsibilities

Takoma Park, MD 20712

Permanent Address

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of Verizon North Inc. for Any	:	
Approvals Required Under the Public	:	Docket No. A-2009-2111330
Utility Code for Transactions Related to	:	Docket No. A-2009-2111331
the Restructuring of the Company to a	:	Docket No. A-2009-2111337
Pennsylvania-Only Operation and Notice	:	
of Affiliate Transaction	:	

MOTION OF
COMMUNICATIONS WORKERS OF AMERICA AND
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS,
LOCALS 1451, 1635, AND 1637
FOR LEAVE TO REPLY TO
VERIZON'S OPPOSITION
TO PETITION FOR INTERLOCUTORY REVIEW

Pursuant to 52 Pa. Code §§ 5.103 and 5.302(d), the Communications Workers of America ("CWA") and International Brotherhood of Electrical Workers, Locals 1451, 1635, and 1637 ("IBEW") hereby move for leave to reply to Verizon North's Opposition to the CWA/IBEW Petition for Interlocutory Review. In support of this motion, CWA and IBEW state as follows:

1. On September 8, 2009, Verizon North Inc. ("Verizon North") filed its brief in opposition to CWA's and IBEW's Petition for Interlocutory Review.

2. In its brief, Verizon North states:

Verizon is a publicly held company with a myriad of shareholders who change daily as shares are traded, and none of whom holds more than 10% of Verizon's stock, let alone the approximately 30% that would be needed to end up with 20% of Frontier's stock. Indeed, the Unions do not claim that any one person or group will hold more than 20% of Frontier stock.

Verizon North brief, p. 5 (footnote omitted).

3. On the next day, September 9, 2009, in a related proceeding in Oregon, Verizon Communications Corp. ("Verizon") (the ultimate parent company of Verizon North) provided for the first time to the undersigned counsel and the unions' financial consultant a series of allegedly confidential documents that were filed by Verizon with the Federal Trade Commission on August 21, 2009, under the provisions of the Hart-Scott-Rodino Act.

4. Among the documents provided was a document from Verizon's financial advisors to Verizon, dated April 20, 2009, which contains a page showing the largest shareholders in both Verizon and Frontier Communications Inc. ("Frontier"), along with the number of shares owned by each shareholder in each company. Affidavit of Randy Barber, attached hereto as Appendix A, ¶ 7.

5. Straight forward calculations using these data show that a group of ten Verizon stockholders collectively would own more than 20% of Frontier's common stock if the proposed transaction between Verizon and Frontier is consummated. Id., ¶ 11.

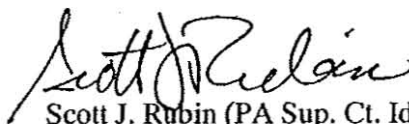
6. Thus, at least as early as April 20, 2009 – and certainly by August 21, 2009, when the information was filed with the Federal Trade Commission – Verizon had information showing that its actions on behalf of its stockholders would result in a small group of shareholders owning a controlling interest (20% of the common stock, as defined by this Commission's policy statement at 52 Pa. Code § 69.901) in Frontier.

7. This is directly contrary to Verizon's statement in its brief that no group would own more than 20% of Frontier's common stock as a result of the proposed transaction.

8. CWA and IBEW, therefore, seek leave to have the Commission consider this newly provided information when the Commission rules on the CWA/IBEW petition for interlocutory review.

WHEREFORE, CWA and IBEW move the Commission to consider this newly provided information in ruling on the CWA/IBEW petition for interlocutory review and answer to a material question.

Respectfully submitted,



Scott J. Rubin (PA Sup. Ct. Id. 34536)
333 Oak Lane
Bloomsburg, PA 17815
(570) 387-1893
scott.j.rubin@gmail.com

Counsel for CWA and IBEW

Dated: September 11, 2009

CERTIFICATE OF SERVICE

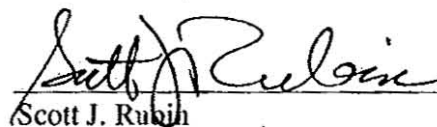
I hereby certify that I have this day served a true copy of the foregoing upon the following parties to this proceeding by first class mail and electronic mail.

Suzan D. Paiva
Verizon Pennsylvania Inc.
1717 Arch Street, 17N
Philadelphia, PA 19103
suzan.d.paiva@verizon.com

Steven C. Gray
Office of Small Business Advocate
300 North Second Street, Suite 1102
Harrisburg, PA 17102
sgray@state.pa.us

Joel Cheskis
Office of Consumer Advocate
555 Walnut Street, 5th Floor
Harrisburg, PA 17101-1923
jcheskis@paoca.org

Johnnie E. Simms
Office of Trial Staff
Pa. Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265
josimms@state.pa.us


Scott J. Rubin

Dated: September 11, 2009

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Application of Verizon North Inc. for Any	:	
Approvals Required Under the Public	:	Docket No. A-2009-2111330
Utility Code for Transactions Related to	:	Docket No. A-2009-2111331
the Restructuring of the Company to a	:	Docket No. A-2009-2111337
Pennsylvania-Only Operation and Notice	:	
of Affiliate Transaction	:	

AFFIDAVIT

1. My name is Randy Barber. I am a financial consultant who has been retained by the International Brotherhood of Electrical Workers ("IBEW") and the Communications Workers of America ("CWA").

2. I am employed by the Center for Economic Organizing and serve as its President. My office address is Suite 204, 6935 Laurel Avenue, Takoma Park, Maryland 20912.

3. I have worked as a financial consultant for more than 25 years. I specialize in complex financial and operational analyses of companies and industries, sometimes in the context of collective bargaining, other times in support of clients' strategic or policy interests. Among the companies that I have analyzed in great depth are Alcatel, Avaya, AT&T, Boeing, Celestica, Columbia/HCA, Eastern Air Lines, Edison Schools, FairPoint Communications, Lucent Technologies, MCI, Oregon Steel, Sylvan Learning Systems, Texas Air Corporation, TIAA-CREF, United Air Lines, the United States Postal Service, and Wal-Mart. More broadly, I have provided clients with various analyses of such industries as aerospace manufacturing, air transport, for-profit education, newspaper publishing, off-road vehicle manufacturers, and telecommunications and internet access and content providers.

4. I have testified as an expert witness (either at trial or by deposition) in several regulatory proceedings, judicial proceedings, and arbitrations. These have included, for example, a class action law suit involving BTT, National Mediation Board Single Carrier proceeding, the Big Sky Airlines Bankruptcy, an Examiner's Investigation into the Bankruptcy of Eastern Air Lines, and the state regulatory proceedings involving FairPoint Communications' purchase of Verizon's landline businesses in Northern New England. In addition, I have served as an expert financial consultant in various proceedings where it was not necessary for me to testify, such as an airline fitness investigation involving ATX, a cross-border airline merger investigation (American Airlines-Canadian Airlines), and a major CWA/AT&T arbitration.

5. I am the financial consultant for CWA and IBEW in state regulatory proceedings involving Frontier Communications' proposed acquisition of Verizon's landline operations in 14 states. To date, I have been assisting CWA and IBEW in conducting discovery in the regulatory proceedings in Illinois, Ohio, Oregon, and West Virginia.

6. On September 9, 2009, I received in discovery in the Oregon proceeding a document dated April 20, 2009, that was prepared for Verizon by its financial advisors, Barclay's and J.P. Morgan. The document also was provided by Verizon to the United States Federal Trade Commission on August 21, 2009, as part of Verizon's Hart-Scott-Rodino filing (identified therein as document 4(c)(41)). Verizon claims that the entire document is confidential, so I cannot attach the specific page of the document or disclose specific information contained therein.

7. Page 9 of the document provides a list of the largest shareholders in both Verizon and Frontier, along with the precise number of shares owned by each shareholder in each company. The page states that the source of the document is a database comprised of the latest available public information filed with the United States Securities and Exchange Commission.

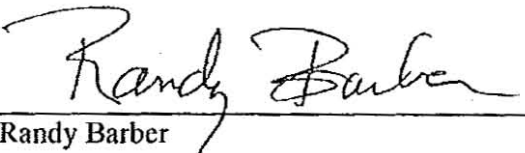
8. For each of the Verizon shareholders listed in this document, I have calculated the number of shares that the shareholder would receive in Frontier if this transaction is completed under the terms of the Agreement and Plan of Merger between Verizon and Frontier (dated as of May 13, 2009).

9. In performing this calculation, I used the lowest Frontier stock price (\$7.00 per share) under which Verizon's shareholders' interests in Frontier would be determined. I used this amount because it reflects the current value of Frontier's stock, which closed on September 10, 2009, at \$6.99 per share.

10. For those shareholders who also are listed as being among the largest holders of Frontier's stock, I added the current Frontier holdings to the Frontier stock the shareholder would receive from the proposed transaction.

11. The result of this calculation is that if the transaction is consummated at a price of \$7.00 per share, ten (10) Verizon shareholders collectively would own more than 20% of Frontier's common stock.

I have signed this Affidavit this 11th day of September, 2009, understanding that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).


Randy Barber